

0-137A038

THE DENVER AND RIO GRANDE RAILROAD COMPANY

LAW DEPARTMENT

P.O. BOX 5482

DENVER, COLORADO 80217

(303) 595-2336

KENDALL T. SANFORD
GENERAL COUNSEL

May 15, 1990

RECORDATION NO. 11478-A
FILED 1990

MAY 17 1990 -3 45 PM

DIRECT DIAL
595-2334

INTERSTATE COMMERCE COMMISSION

VIA DHL WORLDWIDE EXPRESS

Interstate Commerce Commission
ICC Building
12th & Constitution Avenues, N.W.
Washington, D.C. 20423

Attn: Mrs. Mildred Lee
Recordations

Re: Supplemental Lease and Agreement to Denver
and Rio Grande Western Railroad Equipment
Trust, Series RR, Finance Docket No. 29225F

Dear Mrs. Lee:

Pursuant to provisions of the Interstate Commerce Act and Rules and Regulations of the Commission relating thereto, The Denver and Rio Grande Western Railroad Company transmits to the Commission for filing and recording three counterpart originals of Supplemental Lease and Agreement dated as of May 7, 1990, to Lease and Agreement constituting Denver and Rio Grande Western Railroad Equipment Trust, Series RR, dated as of March 1, 1980, which Lease and Agreement were recorded with the Interstate Commerce Commission at 12:05 p.m., February 11, 1980, under Recordation No. 11478.

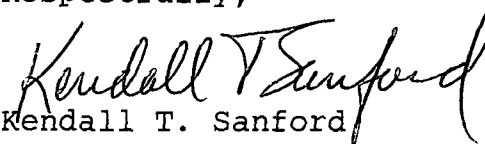
Also enclosed please find The Denver and Rio Grande Western Railroad Company's check in the amount of \$15.00 to cover the recordation fee. After recordation, please return one counterpart original of the Supplemental Lease and Agreement, showing the assigned recordation number, date and time of recording, to

MAY 17 9 39 AM '90
NOTOR BUREAU UNIT

Interstate Commerce Commission
May 15, 1990
Page Two

the undersigned, Kendall T. Sanford, General Counsel, The Denver
and Rio Grande Western Railroad Company, P.O. Box 5482, Denver,
Colorado 80217.

Respectfully,


Kendall T. Sanford

KTS:ks
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

5/25/90

OFFICE OF THE SECRETARY

Kendall T Sanford
General Counsel
The Denver & Rio Grande Railroad Co.
P.O.Box 5482
Denver Colorado 80217

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/17/90 at 3:45pm and assigned recordation number(s). 11478-A

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

11478 A
RECORDING NO. FILED 1990

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INTERSTATE COMMERCE COMMISSION

COUNTERPART NO.

00003

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THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
EQUIPMENT TRUST

SERIES RR

SUPPLEMENTAL LEASE OF RAILROAD EQUIPMENT

Dated as of May 7, 1990

The First National Bank of Denver

To

The Denver and Rio Grande Western Railroad Company

SUPPLEMENTAL AGREEMENT

Dated as of May 7, 1990

Between

The First National Bank of Denver

and

The Denver and Rio Grande Western Railroad Company

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SUPPLEMENTAL LEASE OF RAILROAD EQUIPMENT, dated as of the 7th day of May, 1990, between FIRST INTERSTATE BANK OF DENVER, N.A. (formerly known as The First National Bank of Denver), a national banking association organized and existing under and by virtue of the laws of the United States of America, Trustee, (hereinafter called the "Trustee") party of the first part, and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the "Railroad Company"), party of the second part, WITNESSETH:

WHEREAS, by a certain Agreement, dated as of the 1st day of March, 1980 (hereinafter called the "Agreement"), between Charles W. Smedly, Jr. and James R. Cowgill, Vendors, The First National Bank of Denver, as Trustee, and The Denver and Rio Grande Western Railroad Company (Interstate Commerce Commission Recordation No. 11478, February 11, 1980) there was constituted "Denver and Rio Grande Western Railroad Equipment Trust, Series RR", under which certain railroad equipment therein described was transferred to the Trustee and title to said railroad equipment vested in the Trustee; and

WHEREAS, by a certain Lease of Railroad Equipment (hereinafter called the "Lease"), dated as of the 1st day of March, 1980, to which Lease reference is hereby made, the said Trustee, acting in pursuance of the aforesaid Agreement, leased to the Railroad Company certain railroad equipment in said Agreement and said Lease particularly described; and

WHEREAS, certain of the above mentioned Trust Equipment described herein has been destroyed, and it is provided by Article Fifth (a) of the Lease that the Railroad Company will replace, at its own cost, any of the Trust Equipment that may be destroyed, by new standard gauge rolling stock of equal value, and the Railroad Company has contracted at its own cost to purchase and will cause to be delivered to the Trustee as in said Article provided new standard gauge rolling stock described herein (hereinafter referred to as "Substituted Equipment") in substitution for and to replace said destroyed equipment,

NOW, THIS AGREEMENT WITNESSETH:

That, acting in pursuance of a Supplemental Agreement dated as of the 7th day of May, 1990, between the Trustee and the Railroad Company (hereinafter called the "Supplemental Agreement"), a counter-

part original whereof is annexed to and made a part hereof, the parties hereto agree that the following railroad equipment, to-wit:

Two (2) 3000 HP (SD-40T-2) diesel electric locomotives (General Motors Corporation, Electro-Motive Division, Builder) bearing Denver and Rio Grande Western Railroad's road numbers 5402 and 5408,

shall be and is hereby excluded from the description of the Trust Equipment in the Lease and that the term "Trust Equipment" as used in the Lease and in this Supplemental Lease shall not include said excluded railroad equipment;

That the Trustee, acting in pursuance of the Agreement, for and in consideration of the sum of One Dollar to it paid by the Railroad Company at or before the ensealing and delivery hereof, the receipt of which is hereby acknowledged, as well as of the rents and covenants to be paid, kept and performed by the Railroad Company, has let and leased and does hereby let and lease to the Railroad Company the following Substituted Equipment, consisting of standard gauge railroad rolling stock of The Denver and Rio Grande Western Railroad Equipment Trust, Series RR, to-wit:

One new 3800 HP (GP60) diesel electric locomotive (General Motors Corporation, Electro-Motive Division, Builder) bearing Denver and Rio Grande Western Railroad's road number 3154,

As and when the said Substituted Equipment shall be transferred and delivered to the Trustee under the Supplemental Agreement, and marked in accordance with the provisions of Section Fourth of the Lease, the same shall be delivered to the Railroad Company, and shall, upon such delivery to the Railroad Company, ipso facto, and without further deed of lease or transfer, pass under and become subject to all the terms and provisions of the Lease and this Supplemental Lease, and be deemed a portion of the railroad equipment leased by the Trustee to the Railroad Company in all respects as if the stock had been so delivered simultaneously with the execution and delivery hereof.

And the Railroad Company, in consideration of the premise, by these presents covenants and agrees with the Trustee as follows:

1. The Railroad Company hereby accepts (subject to the conditions mentioned in the Agreement and Supplemental Agreement) this Supplemental Lease of Railroad Equipment, and hereby covenants and agrees to accept delivery and possession hereunder and under the Lease, of the Substituted Equipment as hereinbefore provided.

2. The Railroad Company agrees that the term "Trust Equipment", wherever used herein and in the Lease, unless otherwise indicated or required by the context, shall include the Trust Equipment leased to the Railroad Company by this Supplemental Lease; that the word "Agreement", wherever used herein and in the Lease unless otherwise indicated or required by the content, shall include the Supplemental Agreement; and that the word "lease", whenever used in the Lease, unless otherwise indicated or required by the context, shall include this Supplemental Lease.

3. Subject to the provisions of this Supplemental Lease, all the covenants, agreements, terms and stipulations contained in the lease dated the 1st day of March, 1980, shall remain in full force and effect and binding upon the Railroad Company.

4. This Supplemental Lease shall be simultaneously executed in the same number of counterparts as the original Lease, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Trustee, acting in accordance with the terms and conditions of said Agreement, and the Railroad Company, pursuant to due corporate authority, have caused these presents to be executed as of the day and year first above written.

FIRST INTERSTATE BANK OF DENVER, N.A., Signed, sealed, acknowledged and delivered in the presence of:

FIRST INTERSTATE BANK OF DENVER,
N.A., Trustee

Signed, sealed, acknowledged
and delivered in the
presence of:

By
Vice President and Trust Officer

Attest:

Assistant Cashier

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

Signed, sealed, acknowledged
and delivered in the
presence of:

By

W. J. Holtman

Chairman of the Board and Chief
Executive Officer

Megan
W. J. Holtman

Attest:

D. J. Webster
Assistant Secretary

IN TESTIMONY WHEREOF, I have hereunto set my hand, subscribed my name and affixed my official seal as such notary public, in the said City and County of Denver, and State of Colorado, this the day and year in this my certificate first above written.

My commission expires 11-28-93.

Patricia L. Leal
Notary Public

(SEAL)



STATE OF COLORADO

)

) ss.

CITY AND COUNTY OF DENVER

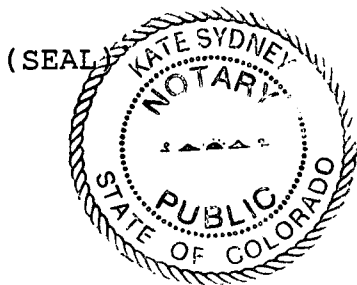
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BE IT REMEMBERED and I do hereby certify that on this 7th day of May, 1990, before me a notary public duly commissioned, qualified and acting for said State, City and County, personally came and appeared before me in the City and County of Denver, W. J. Holtman and D. G. Webster as Chairman of the Board and Chief Executive Officer and Assistant Secretary of The Denver and Rio Grande Western Railroad Company, to me personally known and known to me to be such officers respectively and the individuals described and named in and the identical persons who subscribed their names to and whose names are subscribed to and who exacted the within and foregoing instrument of writing as such officers respectively in my presence; and the said R. C. Schulte and D. G. Webster, and each of them, duly acknowledged to me that the seal affixed to the foregoing instrument is the corporate seal of The Denver and Rio Grande Western Railroad Company and that the same was thereunto affixed by the authority of said corporation; that said instrument was by like authority subscribed with its corporate name; that the said W. J. Holtman is Chairman of the Board and Chief Executive Officer and said D. G. Webster is the Assistant Secretary thereof; that by authority of said corporation they respectively subscribed their names thereto as Chairman of the Board and Chief Executive Officer and Assistant Secretary and that they signed, sealed and delivered the said instrument of writing as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 7th day of May, 1990.

My commission expires: January 18, 1992

Kate Sydney
Notary Public



1515 Arapahoe Suite 986
Denver, Colorado 80202

SUPPLEMENTAL AGREEMENT, dated as of the 7th day of May, 1990, by and between FIRST INTERSTATE BANK OF DENVER, N.A. (formerly The First National Bank of Denver), a national banking association organized and existing under the laws of the United States of America (hereinafter called the "Trustee"), of the first part, and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the "Railroad Company"), of the second part, WITNESSETH:

WHEREAS, pursuant to an agreement dated as of the 1st day of March, 1980 (hereinafter called the "Agreement"), by and between Charles W. Smedly, Jr. and James R. Cowgill, Vendors, The First National Bank of Denver, Trustee, and The Denver and Rio Grande Western Railroad Company (Interstate Commerce Commission Recordation No. 11478, February 11, 1980), the Vendors acquired the railroad equipment (herein called the "Trust Equipment") specifically described in the Lease of Railroad Equipment from the Trustee to the Railroad Company dated as of the 1st day of March, 1980 (hereinafter called the "Lease"), prefixed to the Agreement, the Agreement and Lease constituting Denver and Rio Grande Western Railroad Equipment Trust, Series RR, and the Vendors have sold, assigned, transferred and set over unto the Trustee all of the said Trust Equipment pursuant to the terms and conditions of the Agreement; and the Trustee has leased all of said Trust Equipment to the Railroad Company by the Lease hereinbefore referred to; and

WHEREAS, certain units of railroad equipment specifically described in the Supplemental Lease, constituting a part of the Trust Equipment described in the Lease, have been destroyed and in substitution therefor and in place thereof the Trustee has leased to the Railroad Company, subject to the terms and conditions of the Lease and the Supplemental Lease, the Substituted Equipment specifically described in the Supplemental Lease; and

WHEREAS, the parties hereto desire to make provision for the transfer of the Substituted Equipment to the Trustee under the Agreement:

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The Railroad Company hereby agrees to sell, assign, transfer and set over unto the Trustee, as Trustee for the bearers and registered holders of the Trust Certificates described in the Agree-

ment, the Substituted Equipment described in and leased to the Railroad Company by the Supplemental Lease, prefixed hereto, when the Substituted Equipment is constructed and completed. The Railroad Company will deliver, or cause to be delivered, the Substituted Equipment when constructed and completed to the person or persons designated by the Trustee as its agent or agents to receive such delivery, who may be any one or more of the officers or agents of the Railroad Company, and the certificate of any and every agent so designated shall be conclusive evidence of such delivery. The Trustee and the Railroad Company, simultaneously with the execution of this Supplemental Agreement, have executed and delivered the Supplemental Lease.

2. The term "Trust Equipment", wherever used herein and in the agreement, unless otherwise indicated or required by the context, shall include the Substituted Equipment leased to the Railroad Company by the Supplemental Lease; the word "Lease" whenever used herein and in the Agreement, unless otherwise indicated or required by the context, shall include the Supplemental Lease; and the word "Agreement", wherever used in the Agreement, shall include this Supplemental Agreement.

3. The Trustee and the Railroad Company covenant and agree faithfully to keep and perform, in respect of the Trust Equipment which the Railroad Company has herein agreed to sell, assign, transfer and set over unto the Trustee as Trustee for the bearers and registered holders of the Trust Certificates, and of all other matters covered by this Supplemental Agreement, all the agreements and to do all the things which by the terms of the Agreement are by the Trustee and the Railroad Company, respectively, to be kept, done and performed, in all respects as though the provisions hereof had been originally included in the Agreement.

4. Subject to the provisions of this Supplemental Agreement, all the covenants, agreements, terms and stipulations contained in the Agreement shall remain in full force and effect and binding upon the respective parties.

5. This Supplemental Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Trustee and the Railroad Company have caused their names to be signed hereto by duly authorized officers, and sealed with their corporate seals duly attested, as of the day and year first above written.

Signed, sealed, acknowledged
and delivered in the
presence of:

Mario Diaz
Andrea Delasquez

FIRST INTERSTATE BANK OF DENVER,
N.A., Trustee

By OB Breckenridge Jones
Vice President and Trust Officer

Attest:

Delva Conary
Assistant Cashier

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

Signed, sealed, acknowledged
and delivered in the
presence of:

By W. J. Holtman
Chairman of the Board and Chief
Executive Officer

J. Egan
E. Walsh

Attest:

D. A. Webster
Assistant Secretary

STATE OF COLORADO

CITY AND COUNTY OF DENVER

)
) ss.
)

I, PATRICIA L. LEAL, a Notary Public in and for the State, City and County aforesaid, residing therein, duly commissioned, sworn and qualified as such, and duly authorized to take and certify acknowledgments and proofs of deeds and conveyances of lands, tenements and hereditaments in said City and County, do hereby certify that on this 7th day of May, 1990, personally appeared before me within said County, and in the presence of the two witnesses whose names are subscribed as such to the within and foregoing instruments, D. Breckenridge Grover and Debra Gray, each to me personally known and known to me to be respectively the Vice President and the Assistant Cashier of First Interstate Bank of Denver, N.A., one of the corporations described in and which executed the within and foregoing instrument in writing, and known to me to be the identical persons who subscribed their names to and who executed said instrument as such Vice President and Assistant Cashier, respectively, in my presence and in the presence of the two witnesses whose names are thereunto subscribed as such, and the said D. Breckenridge Grover and Debra Gray, being by me severally duly sworn, did on oath, each for himself and not one for the other, severally depose and say and acknowledge, in the presence of said witnesses, that the said D. Breckenridge Grover resides in the City of Denver, State of Colorado, and that the said Debra Gray resides in the City of Denver, State of Colorado; that the said D. Breckenridge Grover is the Vice President and Debra Gray is the Assistant Cashier of First Interstate Bank of Denver, N.A., one of the corporations described in and which executed the within and foregoing instrument in writing; that they, the said Vice President and Assistant Cashier, know the corporate seal of said corporation; that the seal affixed to said instrument as the seal of said corporation is such corporate seal; that it was so affixed thereto and that said instrument was signed, sealed and executed in behalf of said corporation by order and authority of the Board of Directors of said corporation, and that they and each of them signed their names to the foregoing instrument in their respective capacities as Vice President and Assistant Cashier in behalf of said corporation by like order and authority, and were authorized to execute said instrument; that they signed, sealed, executed and delivered the said instrument as their own free and voluntary act and deed and as the free and voluntary act and deed of said corporation for the consideration, objects, uses and purposes therein stated and set forth; and they severally duly acknowledged to me said instrument to be the free act and deed of said corporation and that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand, subscribed my name and affixed my official seal as such notary public, in the said City and County of Denver, and State of Colorado, this the day and year in this my certificate first above written.

My commission expires 11-28-93.

Patricia L. Loe
Notary Public

(SEAL)

STATE OF COLORADO

)

) ss.

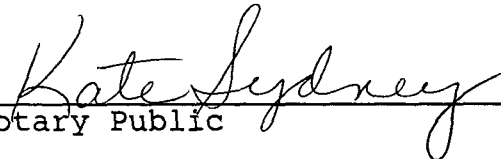
CITY AND COUNTY OF DENVER

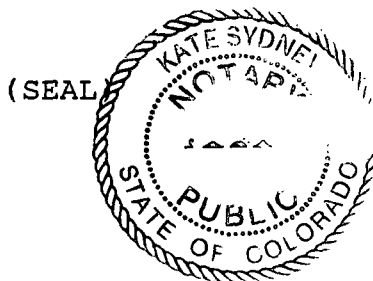
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BE IT REMEMBERED and I do hereby certify that on this 7th day of May, 1990, before me a notary public duly commissioned, qualified and acting for said State, City and County, personally came and appeared before me in the City and County of Denver, W. J. Holtman and D. G. Webster as Chairman of the Board and Chief Executive Officer and Assistant Secretary of The Denver and Rio Grande Western Railroad Company, to me personally known and known to me to be such officers respectively and the individuals described and named in and the identical persons who subscribed their names to and whose names are subscribed to and who exacted the within and foregoing instrument of writing as such officers respectively in my presence; and the said W. J. Holtman and D. G. Webster, and each of them, duly acknowledged to me that the seal affixed to the foregoing instrument is the corporate seal of The Denver and Rio Grande Western Railroad Company and that the same was thereunto affixed by the authority of said corporation; that said instrument was by like authority subscribed with its corporate name; that the said W. J. Holtman is Chairman of the Board and Chief Executive Officer and said D. G. Webster is the Assistant Secretary thereof; that by authority of said corporation they respectively subscribed their names thereto as Chairman of the Board and Chief Executive Officer and Assistant Secretary and that they signed, sealed and delivered the said instrument of writing as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand an notarial seal this 7th day of May, 1990.

My commission expires: **My Commission Expires Jan. 18, 1992**


Notary Public



**1515 Arapahoe Suite 986
Denver, Colorado 80202**